IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 387 Of 2001

(Old No. 203 of 2000)

Amit Garg
S/o Sri U.C. Garg
R/o 5, Bangali Mohall, Dehradun ... Defendant/Revisionist

Versus

1. Arjun Bhatia
S/o Late Col. M.L. Bhatia
R/o 4 Turner Road, Dehradun ... Plaintiff/Opp. Party

2. Kishore ramola
S/o Sri N.S. Ramola
R/o 97/1, Anand Vihar
Dharampur, Dehradun
Second Address : 16-B Lytton Road,
Dehradun ... Defendant
/Proforma Respondent

Sri Narayan Datt, learned counsel for the revisionist.

Hon'ble J.C.S Rawat,J.

The present revision has been directed against the judgment and order dated 25.04.2000 passed by the Small Causes Court/Additional District Judge, Dehradun rejecting the application for the amendment in the written statement in J.S.S.C. Suit No. 7 of 1996, Arjun Bhatia Vs. Amit Garg and another.

According to the plaint case of the parties, the plaintiff/respondent was a landlord of the disputed property and the present revisionist / defendant was tenant of the said premises. The suit was filed for the ejectment of the revisionist. When the suit was pending before the trial court, an application for the amendment was moved before the trial court. By the proposed amendment, the revisionist wanted to add para 20-B

in written statement alleging therein that the suit is bad for the non-joinder of the necessary party to the suit. He further made averment that the defendant / revisionist. Had paid the rent after the death of Indra Prakash Garg son of Sanjeev Garg. The objections were filed against the said amendment application alleging therein that the amendment is mis-conceived. The suit has been filed on the basis of the rights of the tenancy not on the basis of the title. The plaintiff/respondent also alleged therein that the proposed amendment was malafide and it had only been filed to delay the proceedings of the case. Ultimately, it was prayed that the amendment application may be dismissed

After hearing the parties, the learned trial court had held that the proposed amendment was immaterial or meaningless and the proposed amendment does not affect the determination of the real controversy, i.e existence of relationship between the parties. It was further held that the suit has been filed on the basis of the rights of landlord and tenant. As such, the said amendment cannot be allowed and the said amendment was dismissed.

I have heard learned counsel for the revisionist. Notice was sent to the respondents. Inspite of sufficient service, the respondents do not put their appearance before this court.

Before proceedings to the merits of the case , it would be just and proper to deal with the principle to allow the amendment application. It has been held in catena of decision that even if the defendant takes any inconsistent plea in the amendment application, the amendment could not be dismissed. While deciding the amendment application, the court has to see whether the nature of the claim had been changed. In the present case, the defendant only wanted to add the plea of non-

Joinder in the written statement by the proposed amendment. The learned trial court had erred in holding to decide as if the issue has been framed and given his findings on merit. It would have been just and proper to the court to allow the amendment and after the amendment a proper issue would have been framed and thereafter the finding would have been recorded alongwith other findings of the case.

In view of the principle expressed above , I am of the considered view that the said amendment is liable to be allowed and the amendment is allowed on the payment of Rs. 2,000/-. Learned counsel for the revisionist is agreeable to pay Rs. 2,000/- only. The amendment is accordingly allowed . The amount of Rs. 2,000/- may be paid within ten days after the receipt of this order to the trial court. The revisionist is directed to appear before the trial court on 19th September, 2006 for further hearing. The matter is old, as such, the trial court is directed to dispose of the said matter within a period of one month from the date of receipt of the copy of the order. In case, the revisionist does not pay the cost within the stipulated period, the revision shall stand dismissed.

The revision is disposed of accordingly.

(J.C.S. RAWAT,J.)

17th August, 2006
shiv